

1-1005-10235-2  
1-1005-10244-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

ITMO Real Estate Broker License of  
Thomas C. Huffman, License No.  
681393

**ORDER CANCELING**  
**HEARING AND**  
**RECOMMENDING DEFAULT**

and

ITMO Residential Building Contractor's  
License of Craft Master Custom  
Homes, Inc., a Minnesota corporation;  
License No. 8721

On February 9, 1996, the Department of Commerce filed a motion for a default in the above matter due to Thomas Huffman's failure to participate in a scheduled deposition on February 9, 1996. The question of Mr. Huffman's participation in the deposition was the subject of a telephone conference with the Administrative Law Judge on February 9, 1996, prior to the deposition.

Prentiss Cox, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, represents the Department of Commerce. Thomas C. Huffman, 8231 Sheridan Avenue South, Bloomington, Minnesota 55431-1645, represents himself and Craft Master Custom Homes, Inc.

Based upon the arguments submitted and all of the filings in this case:

IT IS HEREBY ORDERED:

1. The hearing scheduled for February 14, 1996, is canceled.
2. It is recommended to the Commissioner of Commerce that the above referenced contested cases be decided in favor of the Department of Commerce in light of Mr. Huffman's default.

Dated this 9th day of February, 1996

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GEORGE A. BECK  
Administrative Law Judge

### **MEMORANDUM**

By an Order dated February 6, 1996, the Administrative Law Judge directed Mr. Huffman to appear for a deposition at 9:30 a.m. on February 9, 1996, and to bring certain documents with him to the deposition. The Order specifically advised Mr. Huffman that if he did not comply with the Order the ALJ would be required to recommend that the case be considered a default and to then further recommend that it be decided adversely to Mr. Huffman. The Order therefore contained a date certain for compliance and a statement of the sanction for noncompliance. Bio-Line v. Wilfley, 365 N.W.2d 338, 340-41 (Minn. Ct. App. 1985).

Although Mr. Huffman did appear on the morning of February 9, 1996, at the Office of the Attorney General, he refused to proceed with the deposition. (Affidavit of Cox.) Nor did he produce the documents demanded. Based upon a telephone conference with the parties prior to the deposition, it appears that Mr. Huffman's refusal to proceed was because he erroneously believed that he had a right to an immediate copy of the tape to be made by the court reporter who was taking the deposition. (See also, Affidavit of Cox). The tape was being made as a back-up to the court reporter's transcript notes. The ALJ did order that Mr. Huffman could make his own tape recording of the deposition if he wished, but the ALJ declined to order that the court reporter provide an immediate copy of her tape since the equipment to duplicate it and to adjust the speed was not available.

Mr. Huffman's tone during the telephone conference (and at the prehearing conference) was combative and obstreperous. He expressed his intention to not accept the ruling of the ALJ. His failure to comply with the Order to participate in the deposition and produce documents was clearly willful and resulted in prejudice to the Department since it needed and was entitled to discovery in this matter in order to prepare for the hearing. The willfulness of this behavior is supported by Mr. Huffman's additional failure to provide his written exhibits, addresses and any statements for his witnesses by February 8, 1996, as ordered by the ALJ.

Since Mr. Huffman willfully failed to comply with the interlocutory order of the ALJ, a default has occurred under Minn. Rule 1400.6000 and it is appropriate for the ALJ to recommend that these contested cases be disposed of adverse to the defaulting party, Mr. Huffman. The authority to impose sanctions for failure to provide discovery is

well-established. First National Bank v. Department of Commerce, 310 Minn. 127, 245 N.W.2d 861, 866 (Minn. 1976); Caucus Distributors, Inc. v. Commissioner of Commerce, 422 N.W.2d 264, 268-69, (Minn. Ct. App. 1988) rev. den. June 10, 1988, (Minn.) cert. den. 109 S. Ct. 786 (1988).

Under Minn. Rule 1400.6000, upon default, the allegations set out in the Notice of Hearing may be taken as true and deemed proved without further evidence. Since the allegations set out in the amended Notice of and Order for Hearing constitute violations of the statutes cited, it is appropriate for the Commissioner to proceed as though the facts are proved against the licenses, as authorized by Minn. Stat. § 14.59, and to consider what disciplinary action is appropriate.

G.A.B.